

No. 83-475

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

RONALD EARL STAHL, *et al.*,
Petitioners,

v.

THE STATE OF OKLAHOMA,
Respondent.

On Petition for a Writ of Certiorari to the
Oklahoma Court of Criminal Appeals

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

1. It is important to note that Respondent does not dispute in any way the facts as set forth by Petitioners. In particular, Respondent does not challenge the fact that the motivation of local officials, including the police, was to diminish and control media coverage of the demonstration because of their desire to avoid publicity that they regarded as embarrassing to themselves and to the nuclear power industry. Respondent also does not contest the fact that Petitioners followed, rather than led, others onto the property, were never participants in the demonstration, were peaceable in all respects, and entered the property solely for the purpose of covering a news event.

2. The cases cited by Respondent (Opp. 5-9) have either been dealt with by Petitioners or are ones with

which the Court is fully familiar. Most of these cases support Petitioners' position, and the explicit findings by the trial court that the local officials limited press access for a censorial purpose render inapposite the remaining cases cited by Respondent (*see* Pet. 12-13). In total, they lodge this case in the mainstream of efforts by local officials to censor the press.

3. Thus, the only issues raised by Respondent are cast in the form of a parade of hypothetical horrors Petitioners' arguments will supposedly call forth. For example, Respondent asks how police officers can be expected to deal with the exigencies of crowd control (Opp. 9-10). But the answer is quite simple, because this type of problem has been dealt with by the police on innumerable occasions in countless jurisdictions. Members of the press are normally known to the police or can easily identify themselves prior to the event to be covered. If there is no opportunity for recognition or identification because of the exigencies of the situation, an initial arrest may be necessary. That does not mean, however, that when proper identification is subsequently made, and it is established that members of the press did not independently break the law (for example, by smashing windows) rather than simply cover a newsworthy event, those persons can be prosecuted. The situation is similar to ones that take place every day in which police authorities allow members of the press to cross barriers, police lines, barricades and the like at fires, accidents, disasters, or other newsworthy events. As for police concern about false or unjustified arrests, the courts have had no problem in dealing with this kind of concern under analogous circumstances in the past. *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 800, 813-820 (1982); *Pierson v. Ray*, 386 U.S. 547, 555-558 (1967).

Respondent raises the question as to who qualifies as a newsperson. But here again, this is the type of decision that police make every day—from Presidential news con-

ferences to courtrooms of limited size. The question of who is protected by the First Amendment is an age-old one that presents no new wrinkles within the context of this case. And limitations on the number of press representatives who can cover an event have always been upheld where circumstances require it and the limitations are not imposed to prevent coverage of the event. *See, e.g., Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 n.17 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 581-582 n.18 (1980) (plurality opinion of Burger, C.J.).

Respondent asserts that the Court would have to engraft a new requirement onto the Oklahoma trespass statute. Quite to the contrary, the state statute would remain unfettered, but it obviously cannot be enforced in a way that violates the First Amendment. Respondent's contention is analogous to saying that a state statute regulating the distribution of leaflets in airports would have to be judicially "amended" if the courts imposed First Amendment restrictions on the enforcement of that statute. Trial courts have proven able in the past to limit a State's trespass laws in the manner Petitioners suggest. *See, e.g., Freedman v. New Jersey State Police*, 135 N.J. Super. 297, 343 A.2d 148 (1975).

Finally, Respondent raises the spectre of a press intruding upon a private citizen whose home has been burglarized. Of course, that hypothetical has no relationship to this case. But, in addition, private property has always been recognized as having peculiar attributes in the law that are not applicable to public or quasi-public property. *See, e.g., Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 83-84, 87 (1980). Respondent does not contend that the property in question here was private. In addition, the law has also recognized the difference between newsworthy events and those that are relatively stale. *See, e.g., Restatement (Second) of Torts* § 652D and Comments d-g, at 388-391 (1977). To compare the fol-

lowing of demonstrators by the press onto property during the course of a *bona fide* news story, such as the demonstration here, with an invasion of someone's home by anyone after a burglary has taken place and the police have left (Opp. 11), is simply to point out the difference between protected and unprotected media coverage.

For the foregoing reasons, and for the reasons in the Petition, the Petition should be granted.

Respectfully submitted,

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